

Calendar No. 147

82D CONGRESS }
1st Session }

SENATE

{ REPORT
{ No. 148

GERALDINE L. SMITH, MOTHER AND NATURAL GUARD- IAN OF THOMAS CLAYTON SMITH, A MINOR

MARCH 5 (legislative day, JANUARY 29), 1951.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted
the following

R E P O R T

[To accompany H. R. 2070]

The Committee on the Judiciary, to which was referred the bill (H. R. 2070) for the relief of Geraldine L. Smith, mother and natural guardian of Thomas Clayton Smith, a minor, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to pay the sum of \$500 to Geraldine L. Smith, mother and natural guardian of Thomas Clayton Smith, a minor, of St. Paul, Minn., in full settlement of all claims against the United States for personal injuries sustained by the said Thomas Clayton Smith when he was struck by a United States Army vehicle at St. Paul, Minn., in 1943, and for reimbursement of hospital and medical expenses incurred by reason of such injuries.

STATEMENT

On the afternoon of April 19, 1943, a soldier, without authority, took an Army reconnaissance car from Fort Snelling, Minn., and drove it into the city of St. Paul, Minn. At about 7:35 p. m. on the same date he was driving the car along Seventh Street in St. Paul at a speed of approximately 45 miles an hour. Three other enlisted men were riding in the vehicle as passengers. A struggle for the steering wheel took place between the driver of the car and the soldier who was riding beside him on the front seat (who apparently was in an advanced state of intoxication), as a result of which the car mounted the curb on the right-hand side of the street and struck Thomas

Clayton Smith, then 3 years of age. The boy's right foot was in some manner caught in the right front wheel of the Army car and the tip of his shoe and flesh from two of his toes were found pressed between the wheel rim and the tire casing. He also sustained contusions of the left cheek and the left upper lip. The records of the Department of the Army show that for the treatment of the above described injuries medical and hospital expenses were incurred in the aggregate amount of \$41.35 (\$23.35, amount of bill of Ancker Hospital, St. Paul, Minn.; and \$18, fee of Dr. Cecil A. Warren, St. Paul). The evidence shows that the bill of the Ancker Hospital in the amount of \$23.35 was paid by the American Red Cross on September 7, 1943.

The Department of the Army states in its report, dated February 9, 1950, that—

the evidence in this case clearly establishes that the injury sustained by Thomas Clayton Smith was not caused by any fault or negligence on his part but was caused solely by the negligence of the two soldiers occupying the front seat of the Army vehicle at the time of the accident. Inasmuch, however, as the two soldiers in question were using the vehicle without authority and, therefore, were not at the time acting within the scope of their employment as soldiers, there is no legal basis for a claim against the United States by Geraldine L. Smith, as mother and natural guardian of this boy. Nevertheless, in view of the circumstances in this case, and since the child's injury was not caused by any fault or negligence on his part, the Department of the Army would have no objection to the enactment of H. R. 5109 if it should be amended to grant an award to the claimant in an amount not exceeding \$500, which, it is believed, would constitute a fair and reasonable settlement of this claim.

A similar bill of the Eighty-first Congress, H. R. 5109, was not reported favorably to the Senate for the reason that the Army personnel involved were acting outside the scope of their authority.

Further attention has been given to the report of the Department of the Army on H. R. 5109 wherein the Army concludes that payment could reasonably be made in the sum of \$500 on the basis of equitable and moral responsibility of the Government.

After careful consideration, the committee is constrained to agree with the conclusions reached by the Department of the Army and recommends that favorable consideration be given to H. R. 2070.

Attached and made a part of this report are the above referred to report from the Department of the Army and pertinent affidavits.

DEPARTMENT OF THE ARMY,
Washington, D. C., February 9, 1950.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CELLER: Reference is made to your letter enclosing a copy of H. R. 5109, Eighty-first Congress, a bill for the relief of Thomas Clayton Smith, and requesting a report on the merits of the bill.

This bill would authorize and direct the Secretary of the Treasury "to pay, out of any money in the Treasury not otherwise appropriated, to Geraldine L. Smith, mother and natural guardian of Thomas Clayton Smith, a minor, of Saint Paul, Minnesota, the sum of \$2,500 * * * in full settlement of all claims against the United States (1) for compensation for personal injuries sustained by the said Thomas Clayton Smith when he was struck by a United States Army vehicle at Saint Paul, Minnesota, in 1943, and (2) for reimbursement of hospital and medical expenses incurred by reason of such injuries."

The records of the Department of the Army show that on the afternoon of April 19, 1943, a soldier took an Army reconnaissance car without authority from Fort Snelling, Minn., and drove it into the city of St. Paul, Minn. At about

7:35 p. m. on the same date he was driving the car along Seventh Street in St Paul at a speed of approximately 45 miles an hour. Three other enlisted men were riding in the vehicle as passengers. A struggle for the steering wheel took place between the driver of the car and the soldier who was riding beside him on the front seat, and who apparently was in an advanced state of intoxication, as a result of which the car mounted the curb on the right-hand side of the street and struck Thomas Clayton Smith, then 3 years of age. It appears that the boy's right foot was in some manner caught in the right front wheel of the Army car and that the tip of his shoe and flesh from two of his toes were found pressed between the wheel rim and the tire casing. He also sustained contusions of the left cheek and the left upper lip. The records of the Department of the Army show that for the treatment of the above-described injuries medical and hospital expenses were incurred in the aggregate amount of \$41.35 (\$23.35, amount of bill of Ancker Hospital, St. Paul, Minn.; and \$18, fee of Dr. Cecil A. Warren, St. Paul). The evidence shows that the bill of the Ancker Hospital in the amount of \$23.35 was paid by the American Red Cross on September 7, 1943.

On May 26, 1943, Dr. T. E. Broadie, superintendent, Ancker Hospital, St. Paul, Minn., submitted a report concerning the injuries sustained by this boy, in which he said:

"Since that date [April 19, 1943], he has been examined in the out-patient department and at last examination, there remained a small area of granulation over the tip of the large toe. Prognosis, in general, is good. It is not likely that any permanent disability will accrue."

One June 1, 1943, Second Lt. Harold H. Rice, investigating officer, who states that in the course of investigation of this accident he examined the right foot of Thomas Clayton Smith, submitted a certificate in which he said:

"* * * I examined the right foot of Thomas Smith and it appears that complete recovery will occur in a short time. Both of the toes that have been injured have grown to their original size and shape. The Red Cross chapter at Fort Snelling, Minn., is now investigating this case with a view to taking care of all financial losses sustained by the Smith family as a result of the accident."

Thomas Clayton Smith, at the age of 8 years, was examined by Dr. Cecil E. Warren, 373 Lowry Medical Arts Building, St. Paul, Minn., on March 15, 1948. In a report of such examination, dated August 24, 1948, Dr. Warren stated:

"Examination of the injured parts revealed amputation of a segment of the soft parts of the medial aspect of the right big toe, with a scar extending over the nail. The nail of second toe of the right foot was absent, with evidence of amputation of a portion of the soft parts, producing some shortening of the toe. The joints of the toes were normal. There was a history of additional injuries to the head and arms, but no abnormalities were discovered on examination at this time.

"The child is a small frail individual, rather shy of manner. His mother thinks there has been a change in his character since his injury, manifested particularly by nervousness."

The evidence in this case clearly establishes that the injury sustained by Thomas Clayton Smith was not caused by any fault or negligence on his part but was caused solely by the negligence of the two soldiers occupying the front seat of the Army vehicle at the time of the accident. Inasmuch, however, as the two soldiers in question were using the vehicle without authority and, therefore, were not at the time acting within the scope of their employment as soldiers, there is no legal basis for a claim against the United States by Geraldine L. Smith, as mother and natural guardian of this boy. Nevertheless, in view of the circumstances in this case, and since the child's injury was not caused by any fault or negligence on his part, the Department of the Army would have no objection to the enactment of H. R. 5109 if it should be amended to grant an award to the claimant in an amount not exceeding \$500, which, it is believed, would constitute a fair and reasonable settlement of this claim.

This claimant has no remedy under the Federal Tort Claims Act (60 Stat. 843; 28 U. S. C. 931), as revised and codified by the act of June 25, 1948 (62 Stat. 933; 28 U. S. C. 1346 (b)), and as amended by Public Law 55, Eighty-first Congress, approved April 25, 1949, for the reason that the accident out of which this claim arises occurred prior to January 1, 1945.

The Bureau of the Budget advises that it has no objection to the submission of this report.

Sincerely yours,

GORDON GRAY, *Secretary of the Army.*

collected from the files of the Department of the Army

and is being submitted to the Department of the Army for their use

AFFIDAVIT

Odean J. Jackson, being first duly sworn deposes and says that he is an officer of the St. Paul Police Force and has been for a number of years and that in the course of his duties on the 19th day of April 1943, at about 7:30 in the evening, he was cruising in the West Seventh Street district in St. Paul and in the course of his duties attended the scene of an accident at or about 1352 West Seventh Street, St. Paul, Minn.

That your affiant found a small boy whose name affiant was informed was Thomas Clayton Smith, who had been the victim of an accident when he was hit and run over by a United States Army jeep, No. 20135500, and caused to suffer the loss of some toes.

Affiant further states that he observed the toe of the little boy's shoe and the parts of two toes pressed in between the bead of the tire and the steel rim of the wheel on the above-mentioned jeep.

Affiant further states that Pvt. Edward Elton Floyd, then of the Seven Hundred and First Railroad Operation Battalion, Grand Division, of Fort Snelling, Minn., was the driver of the above-mentioned jeep and that he was accompanied in said jeep by Sgt. Rueben E. Gustafson of Fort Snelling, and that your affiant observed that the said Floyd had been drinking and that said Gustafson was intoxicated.

Affiant further states that the above-mentioned Private Floyd and the other occupants of the above-mentioned Army jeep told your affiant that Sergeant Gustafson and Private Floyd were arguing and fighting over the wheel of the jeep and that while this was going on the jeep went up over the curb and hit the little Smith boy. Affiant further states that he and the other officers of the St. Paul Police Force were forced to use duress on the above-mentioned Sergeant Gustafson because of his inebriated condition.

Affiant further states, according to information he has from the police records it appears that Lieutenants Murphy and Rice, who were stationed at Fort Snelling at the time of the accident, were present at the Public Safety Building, city of St. Paul, Minn., at the time the driver Floyd was questioned by the officers of the Accident Division and that a report had been made concerning the same.

ODEAN J. JACKSON.

Subscribed and sworn to before me this 27th day of April 1949.

[SEAL]

DANIEL JOHN O'CONNELL,
Notary Public, Ramsey County, Minn.

My commission expires December 6, 1951.

AFFIDAVIT

My name is Thomas E. Donahue, and I live at 971 Otto Street, St. Paul, Minn.

On the 19th day of April 1943, at about 7:30 in the evening, I was walking west on the south side of what is known as West Seventh Street in about the 1300 block when I observed a United States Army jeep, which was being driven east on said West Seventh Street, careen up over the curb and onto the boulevard and collide with a small boy and after striking the boy the jeep proceeded back down to the street and eastward on Seventh Street without stopping.

It is my understanding that this boy is little Thomas Smith, who lives at 1352 West Seventh Street, St. Paul, Minn.

There was no obstruction in the street that I could observe nor any other apparent reason for this jeep to suddenly turn up over the curb at that time and place.

I have read the above statement and it is true to the best of my knowledge.

THOMAS E. DONAHUE.

MARCH 15, 1948.

ANKER HOSPITAL,
St. Paul, Minn., February 14, 1948.

Re Thomas Clayton Smith, 1352 West Seventh Street, St. Paul, Minn., A. H. No. 109228.

Mr. DANIEL D. O'CONNELL,
St. Paul 1, Minn.

DEAR MR. O'CONNELL: This will acknowledge receipt of your communication of February 10 in which you inquire concerning Thomas Clayton Smith.

Examination of the record reveals that an individual of that name, aged 3, was examined in the emergency department of this hospital, on April 19, 1943. History was to the effect that he had been struck by a moving vehicle while standing on a curb at 1352 West Seventh Street, this city.

Examination revealed a partial amputation of the first and second toes of the right foot. There was swelling and tenderness about the fifth left finger but no fractures were revealed. There was contusion of the left cheek and the left upper lip. Emergency treatment was accorded and the patient was taken home. Subsequent to that date he was examined in the out-patient department regularly and on June 29, 1943, he was discharged as recovered. Prognosis on that date was considered to be good. It was not contemplated that permanent disability would ensue.

Very truly yours,

T. E. BROADIE, M. D., *Superintendent.*

St. PAUL 1, MINN., *August 24, 1948.*

Re Thomas Smith, 737 Hague Avenue, St. Paul, Minn.

Mr. DANIEL D. O'CONNELL,
St. Paul, Minn.

DEAR MR. O'CONNELL: In answer to your request, I am giving you the following report in the case of Thomas Smith, 8 years old, whom I examined at my office on March 15, 1948. His mother gave the following history:

The boy was injured on April 19, 1943, in front of 1352 West Seventh Street, St. Paul, Minn. The patient was standing on the boulevard when a jeep in which two United States soldiers were riding, went up on the curb, the rim of the wheel running over the patient's right foot. He was taken to Ancker Hospital for emergency treatment and subsequent care. He was not hospitalized, but was treated in the out-patient clinic until June 1943. He has had no medical care since then.

Examination of the injured parts revealed amputation of a segment of the soft parts of the medial aspect of the right big toe, with a scar extending over the nail. The nail of the second toe of the right foot was absent, with evidence of amputation of a portion of the soft parts, producing some shortening of the toe. The joints of the toes were normal. There was a history of additional injuries to the head and arms, but no abnormalities were discovered on examination at this time.

The child is a small frail individual, rather shy of manner. His mother thinks there has been a change in his character since his injury, manifested particularly by nervousness.

Very truly yours,

CECIL A. WARREN, M. D.

Dr. CECIL A. WARREN

St. PAUL 2, MINN., *May 1, 1949.*

Mr. DAN O'CONNELL,
St. Paul, Minn.:

For professional services (bill for Thomas Smith, 737 Hague), \$18.

PATIENT'S STATEMENT

ANCKER HOSPITAL,

St. Paul 1, Minn., February 14, 1948.

In account with Smith, Thomas, 1352 West Seventh Street.

X-ray services	-----	\$8. 50
Dispensary or out-patient services, Apr. 19, 22, 29, May 1, 4, 11, 18, 25,	-----	
June 1, 8, 15, 29	-----	12. 00
Other services (combined tetanus antitoxin)	-----	2. 85
Total	-----	23. 35
Paid	-----	

E. JOHNSON.

